

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

June 22, 2010

CHIEF CLERKS OFFICE

2010 JUN 22 PM 4:08

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-09-5891; TCEQ Docket No. 2007-1259-PST -E; In Re:
Executive Director of the Texas Commission of Environmental Quality, v.
4200 Rosedale LLC and the Goodyear Tire & Rubber Company

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than July 12, 2010. Any replies to exceptions or briefs must be filed in the same manner no later than July 22, 2010.

This matter has been designated **TCEQ Docket No. 2007-1259-PST-E; SOAH Docket No. 582-09-5891**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "Ami L. Larson".

Ami L. Larson

Administrative Law Judge

ALL/slc
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: 4200 ROSEDALE LLC & THE GOODYEAR TIRE & RUBBER CO.
SOAH DOCKET NUMBER: 582-09-5891
REFERRING AGENCY CASE: 2007-1259-PST-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ AMI LARSON**

REPRESENTATIVE / ADDRESS

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GOODYEAR TIRE & RUBBER COMPANY

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2010 JUN 22 PM 4:08
CHIEF CLERK'S OFFICE

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TCEQ EXECUTIVE DIRECTOR

xc: Docket Clerk, State Office of Administrative Hearings

SOAH DOCKET NO. 582-09-5891
TCEQ DOCKET NO. 2007-1259-PST-E

2010 JUN 22 PM 4: 08

EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,

Petitioner

v.

4200 ROSEDALE LLC AND THE
GOODYEAR TIRE & RUBBER
COMPANY,

Respondents

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BEFORE THE STATE OFFICE

CHIEF CLERKS OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

On January 22, 2010, the Executive Director (Executive Director) of the Texas Commission on Environmental Quality (Commission or TCEQ) filed its Second Amended Report and Petition (EDSARP), which alleged that Respondents Goodyear Tire & Rubber Company (Goodyear) and/or 4200 Rosedale LLC (Rosedale) committed violations of the applicable law by failing to permanently remove from service an out-of-compliance underground storage tank (UST) system and failing to provide an updated UST registration form to the TCEQ. The UST at issue is located at 4200 East Rosedale Street, Fort Worth, Tarrant County, Texas (Facility). In its EDSARP, the Executive Director sought an order requiring Respondents to permanently remove the UST system from service, submit an amended UST registration to the TCEQ, and pay an administrative penalty. The matter was referred to the State Office of Administrative Hearings (SOAH) for hearing.

The Administrative Law Judge recommends that the Commission find that the alleged violations occurred, and order that Rosedale be required to take the corrective actions recommended by the Executive Director and pay a penalty of \$3,675.

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

Respondents Rosedale and Goodyear filed separate motions for summary disposition, which were denied on February 22, 2010. The hearing on the merits convened on April 8, 2010, before Administrative Law Judge Ami L. Larson in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Attorney Anna Treadwell represented the Executive Director, Rosedale appeared by attorney S. George Alfonso, and Goodyear appeared by attorney Al Axe. The record closed on April 26, 2010, following the submission of closing and reply briefs by all parties.

III. DISCUSSION

The material facts and evidence in this case are not in dispute and were stipulated to by the parties.¹ Additionally, the parties did not contest the alleged violations or proposed penalty amounts. The only issue in dispute is the ownership of the UST and corresponding liability for the violations alleged.

A. Ownership of the UST

Rosedale is the current owner of the property located at 4200 East Rosedale Street, Fort Worth, Tarrant County, Texas, (the Property) and the automotive repair garage located there.

On or about September 11, 1970, Goodyear entered into a lease with Doug Corder and Glenn Walls (Corder and Walls), the then-owners of the Property, to operate a motor vehicle service center at that location. The lease required Corder and Walls to construct improvements on the Property at their expense prior to Goodyear occupying the Property. In a letter dated January 28, 1971, Corder and Walls notified Goodyear that they had completed construction of

¹ Exh. 24.

the improvements on the Property. At that time, Goodyear's rental payments under the lease began.

There is no direct evidence in the record that a UST was installed on the Property by Corder and Walls, as part of the improvements constructed pursuant to the lease terms. However, Donald Dixon, the Global Real Estate Manager for Goodyear, testified that he is familiar with the type of lease agreement effected between Goodyear and Corder and Walls, which is commonly known as a "turnkey lease." According to Mr. Dixon, a UST is the type of improvement that was often constructed and paid for by the property owner in a turnkey lease agreement concerning an automotive service station. Mr. Dixon further testified that, under a turnkey lease agreement, the property owner would typically retain ownership of the improvement items, such as USTs, that were unique to the facility and specific to the property.

Corder and Walls notified Goodyear that its lease for the property was being assigned to the new owners of the Property, Mr. and Mrs. F.G. Rosenau (Rosenaus) as of March 4, 1971.² Goodyear's lease for the Property expired on January 31, 1986. Youssef Esmailzadeh and Nahid Youssefzadeh (YE and NY) purchased the Property from the Rosenaus on April 13, 1987.³

Rosedale then bought the Property from YE and NY pursuant to a general warranty deed dated September 21, 2005, which expressly conveyed improvements at the Property to Rosedale. On June 30, 2008, an existing UST was removed from the Property by a licensed contractor hired by Rosedale. Rosedale notified the ED of the UST removal.

On April 29, 1986, approximately four months after the expiration of its lease, Goodyear submitted an Environmental Protection Agency (EPA) promulgated form entitled "Notification for Underground Storage Tanks"⁴ to TCEQ's predecessor, the Texas Water Commission (TWC). In the "Ownership of Tanks" section of that form, "Lease Controlled by Goodyear Tire & Rubber" was written. The "Location of Tank(s)" section of the form indicated "Goodyear

² Exh. 7.

³ Exh. 2.

⁴ Exh. 8.

Leased Facility.” On July 29, 1992, Goodyear submitted a TWC UST Registration Form notifying the TWC that “Goodyear is no longer the owner or operator of this facility as the lease controlling the property was canceled or is expired.”⁵ The section entitled “Ownership Information” on that form was left blank.

The TCEQ rules define an owner of a UST as “any person who holds legal possession or ownership of an interest in a UST.”⁶ The rule further states that “if the actual ownership of a UST system is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the UST system is located is considered the UST system owner unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the UST system is owned by another person.”⁷ Additionally, the rules indicate that a person who has registered as an owner of a UST system with the commission after September 1, 1987, shall be considered the UST system owner until such time as documentation demonstrates to the executive director’s satisfaction that the legal interest in the UST was transferred to a different person after the date of the tank registration.⁸

Based upon the UST Notification and Registration forms filed by Goodyear in 1987 and 1992, respectively, Rosedale asserted that Goodyear is the owner of the UST and should be held responsible for any related violations. Goodyear denied ever having owned or registered as the owner of the UST, but claimed that it was merely an operator and lessee of the UST during the term of its lease of the Property from January 1971 through January 1986.

The ALJ finds that the ownership of the UST at issue is “uncertain, unknown, or in dispute” pursuant to TCEQ rules. Accordingly, Rosedale, as the fee simple owner of the Property where the UST is located, is considered to be the owner of the UST absent any legally sufficient demonstration that Goodyear, or another person, is the owner. Although it is true that Goodyear filed UST Notification and Registration forms with TWC after its lease of the Property

⁵ Exh. 9.

⁶ 30 TEX. ADMIN. CODE § 334.2(73).

⁷ *Id.*

⁸ *Id.*

had expired, the information provided on those forms is ambiguous and is not legally sufficient to establish that Goodyear retained any ownership interest in the UST after its lease terminated. The evidence demonstrates that the purpose of the EPA notification form filed by Goodyear in 1987 was to provide states with a complete inventory of USTs for regulatory purposes and that the form was allowed to be filed by persons other than UST owners.⁹ Moreover, the UST registration form filed by Goodyear in 1992 included no owner information and, under the registration portion, specifically indicated that Goodyear was not an owner or operator. At best, the content and meaning of this form is ambiguous and, as such, it is not sufficient to demonstrate any ongoing ownership interest in the UST by Goodyear. Additionally, none of the warranty deeds for sales of the Property, including the deed governing the sale to Rosedale, include any deed reservations to suggest that ownership of the UST did not transfer to the owner of the Property.

Finally, the ALJ notes that Rosedale arranged for the removal of the UST and, on the Construction Notification Form for the UST removal, Rosedale was listed under the section entitled "Owner Information."

Accordingly, the ALJ finds that, based on the preponderance of the evidence and the applicable law, Rosedale is the owner of the UST at issue.

B. Failure to Timely Remove USTs.

The Texas Water Code and TCEQ rules require that all existing UST systems that are not brought into timely compliance with the minimum upgrade requirements be permanently removed from service.¹⁰

On January 9, 2007, during an investigation of the Property, TCEQ Dallas/Ft. Worth Regional Office Investigator Lonnie Gilley observed and documented that the single UST system located there did not appear to have corrosion or cathodic protection, which is required as an

⁹ Exh.. 23.

¹⁰ 30 TEX. ADMIN. CODE (TAC) § 334.47(a)(2); *see* TEX. WATER CODE § 26.347.

upgrade pursuant to TCEQ rules.¹¹ Because the UST did not have a cathodic protection system,¹ it was required to be permanently removed from service in accordance with TCEQ rules.¹²

On July 18, 2007, Mr. Gilley conducted a follow-up investigation of the Property during which he observed and documented that the UST remained without a cathodic protection system and had not been permanently removed from service.¹³

On June 30, 2008, Mr. Gilley conducted an investigation of the UST removal at the Property.¹⁴ At that time, Mr. Gilley was able to observe the UST and confirm that it had no corrosion protection. He also observed that the UST appeared to be at least 30 years old, had visible holes and obvious corrosion, and that an oily substance remained in the soil underneath where the UST had been. Mr. Gilley testified that, although the UST had been physically removed from the ground, the removal was not conducted according to TCEQ rules, which require an owner to submit a release determination report, conduct a site assessment, and complete any necessary corrective action.¹⁵ Corrective action was necessary in this case, because soil samples taken at the site were analyzed and found to have impermissible levels of various chemical compounds.¹⁶ Mr. Gilley testified that he did not receive a release determination and no corrective action had been taken.

Neither Respondent disputed that the UST was in violation of the TCEQ requirements for timely upgrading or permanent removal.

Based on the evidence presented and Respondents' failure to contest that evidence, the ED has established that a violation of 30 TEX. ADMIN. CODE § 334.47(a)(2) occurred. This rule requires USTs to be permanently removed from service, no later than 60 days after the

¹¹ 30 TAC §§ 334.47(a)(2) and 334.49.

¹² 30 TAC § 334.55.

¹³ Exh. 13.

¹⁴ Exh. 14.

¹⁵ 30 TAC § 334.55.

¹⁶ Exh. 14

prescribed upgrade implementation date, when an applicable component of the system is not brought into timely compliance with the upgrade requirements.

C. Failure to Timely Notify TCEQ of any Change Regarding UST.

The Texas Water Code and TCEQ rules require that the owner of an UST system must notify the TCEQ of any change or additional information regarding the UST system within thirty days from the date of the occurrence of the change or addition or within thirty days from the date on which the owner or operator first became aware of the change or addition.¹⁷

Mr. Gilley testified that updated information had not been provided to TCEQ as required regarding either the owner information or the operational status of the UST system on the Property. Mr. Gilley testified that the most recent information contained in the Petroleum Storage Tank (PST) database indicated that the UST was "in use." He noted, however, that he had observed that the tank was out of service during his investigation on January 9, 2007, and that information was confirmed by the lessee of the facility during Mr. Gilley's July 18, 2007 follow-up investigation.

Mr. Gilley also indicated that updated UST ownership information had not been provided to TCEQ as required. He explained that the only forms on file with TCEQ regarding the UST were the forms submitted by Goodyear in 1986 and 1992,¹⁸ and that the ownership of the UST is not clear from the information provided on either of those forms. The evidence further indicates that no UST Registration Forms were received after 1992, and no properly-completed UST Registration Forms were ever submitted for this UST as required.¹⁹

¹⁷ 30 TEX. ADMIN. CODE § 334.7(d)(3); *see* TEX. WATER CODE § 26.346.

¹⁸ Exhs. 8 and 9.

¹⁹ Exh. 30 and Mr. Gilley's testimony. Rosedale argued that the fact that no UST Registration Form was filed after the 1992 form submitted by Goodyear demonstrates that Goodyear remains the current owner of the UST. The ALJ rejects that argument, however. The language on the 1992 form, which was not completely filled out, tends to deny Goodyear's ownership.

The evidence in the record and Respondent's failure to contest that evidence, establishes a violation for failure to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.²⁰

D. Reasonableness of the penalty assessed.

The Texas Water Code § 7.053 requires the TCEQ to consider certain factors when calculating an administrative penalty. In considering those factors and using an established Penalty Policy, the Executive Director recommended a penalty of \$3,765.00 for Rosedale's violations. Rosedale stipulated that the amount was calculated in accordance with the applicable TCEQ Penalty Policy.

Accordingly, based on the evidence and above discussion, the ALJ finds that Executive Director is entitled to judgment that the penalty amount of \$3,765.00 is reasonable and justified.

E. Necessity of Corrective Action

The evidence establishes that the UST was not properly permanently removed, and neither a release determination report nor a site assessment has been submitted to TCEQ as required. Accordingly, the evidence demonstrates that corrective action is still required.²¹

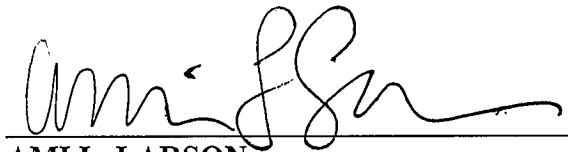
²⁰ 30 TEX. ADMIN. CODE § 334.7(d)(3).

²¹ 30 TEX. ADMIN. CODE §§ 334.7(d)(3) and 334.47(a)(2); *see* TEX. WATER CODE § 26.351(b).

IV. RECOMMENDATION

Based on the record and for the reasons stated above, the ALJ recommends that the Commission find Respondent Rosedale has violated state laws and regulations as alleged by the Executive Director, and adopt the attached proposed Order, which assesses \$3,675.00 in administrative penalties against Rosedale, and requires it to undertake specified actions necessary to bring its facility into compliance with state law.

ISSUED June 22, 2010.

A handwritten signature in black ink, appearing to read "Ami L. Larson", written over a horizontal line.

AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Assessing Administrative Penalties Against and Ordering Corrective Action by 4200 Rosedale LLC; TCEQ Docket No. 2007-1259- PST-E; SOAH Docket No. 582-09-5891

On _____, 2010, the Texas Commission on Environmental Quality (TCEQ or Commission) considered the Executive Director's Second Amended Report and Petition (EDSARP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Respondents 4200 Rosedale LLC (Rosedale) and/or the Goodyear Tire & Rubber Company (Goodyear). A Proposal for Decision (PFD) was presented by Ami L. Larson, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH).

After considering the ALJ's PFD, the Commission adopts the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Rosedale is the current owner of the property located at 4200 East Rosedale Street, Fort Worth, Tarrant county, Texas (the Property).
2. One inactive underground storage tank (UST) that was not exempt or excluded from regulation existed on the Property when Rosedale purchased the Property in 2005.
3. The deed pursuant to which Rosedale purchased the Property did not exclude the UST

from conveyance to Rosedale with the Property.

4. No deed for prior sales of the Property excluded the UST from conveyance to owners of the Property prior to Rosedale.
5. In 1970, Goodyear entered into a lease with Doug Corder and Glenn Walls (Corder and Walls), who owned the Property at that time.
6. Goodyear's lease for the Property expired on January 31, 1986.
7. Goodyear acknowledged having leased and operated, but denied ever having owned, the UST located on the Property.
8. Rosedale did not demonstrate by appropriate documentation that the UST on the Property was owned by Goodyear or any other person and, therefore, Rosedale is the presumed UST owner in light of Section 26.342(9) of the Texas Water Code provides that "[i]f the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person."
9. On January 9, 2007, and July 18, 2007, TCEQ Dallas/Ft. Worth Regional Office Investigator Lonnie Gilley inspected the Property and documented the following violations:
 - Failure to notify TCEQ of any change or additional information regarding the UST's within 30 days of the occurrence of the change or addition; specifically, the registration was not updated to reflect the correct ownership information and

current operational status of the UST at the Property pursuant to 30 TEX. ADMIN. CODE §334.7(d)(3); and

- Failure to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements as required by 30 TEX. ADMIN. CODE § 334.47(a)(2).
10. In 2008, Rosedale hired a licensed contractor to remove the UST from the Property and notified the ED of the removal.
 11. On June 30, 2008, Mr. Gilley conducted an investigation of the UST removal at the Property and observed that the UST had visible holes, obvious corrosion, and an oily substance remained in the soil underneath where the UST had been.
 12. Soil samples taken at the UST site on the Property were analyzed and found to have prohibited concentrations of various chemical compounds.
 13. Rosedale did not submit a release determination report, conduct a site assessment, or complete any necessary corrective action following the removal of the UST in 2008.
 14. On May 13, 2009, the Executive Director filed a First Amended Report and Petition, and on January 15, 2010, the Executive Director filed a Second Amended Report and Petition (EDSARP), in accordance with TEX. WATER CODE ANN. § 7.054. The EDSARP alleged that:
 - (a) Respondents violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; and

- (b) Respondent violated 30 TEX. ADMIN. CODE § 334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.
15. The Executive Director recommended that the Commission enter an enforcement order assessing total administrative penalties of \$3,675 against Rosedale and that the Commission order Rosedale to take certain corrective actions.
 16. The \$3,675 administrative penalty sought in the EDSARP is an accumulation of the different penalties assessed for each violation.
 17. The Executive Director mailed a copy of the First Amended Petition and Report and the EDSARP to Respondents via counsel at 5430 Alpha Road, Dallas, Texas 75240 and 401 Congress Avenue, Suite 2100, Austin, Texas 78701 on the same dates that they were filed.
 18. Respondents each filed an answer to the ED's First Amended Report and Petition and requested a hearing.
 19. On August 3, 2009, the TCEQ referred this matter to SOAH for a contested case hearing.
 20. On September 2, 2009, the TCEQ Chief Clerk mailed notice to Respondents of the preliminary hearing scheduled for October 8, 2009.
 21. The notice of hearing:
 - Indicated the time, date, place, and nature of the hearing;
 - Stated the legal authority and jurisdiction for the hearing;
 - Indicated the statutes and rules the Executive Director alleged Respondent violated.

- Advised Respondent, in at least twelve-point bold-faced type, that failure to appear at the preliminary hearing or the evidentiary hearing in person or by legal representative would result in the factual allegations contained in the notice and First Amended Report and Petition being deemed as true and the relief sought in the notice possibly being granted by default; and
 - Included a copy of the Executive Director's penalty calculation worksheet, which shows how the penalty was calculated for the alleged violations.
22. On October 8, 2009, the Executive Director and Respondents appeared at a preliminary hearing and agreed to a procedural schedule.
23. The hearing on the merits was held on February 25, 2010. All parties appeared and participated in the hearing. The record closed on April 26, 2010, upon the submission of closing briefs by the ED and Respondents.

II. CONCLUSIONS OF LAW

1. Under TEX. WATER CODE ANN. § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code or of the Texas Health and Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Respondent Rosedale owns the UST located on the Property, which was transferred to Rosedale in 2005 as part of its purchase of the Property.
3. Under TEX. WATER CODE ANN. § 7.052, a penalty may not exceed \$10,000.00 per violation, per day for the violations alleged in this proceeding.
4. In addition to imposing an administrative penalty, the Commission may order the violator to take corrective action, as provided by TEX. WATER CODE ANN. § 7.073.

5. As required by TEX. WATER CODE ANN. §7.055 and 30 TEX. ADMIN. CODE §§ 1.11 and 70.104, Respondents were notified of the ED First Amended Report and Petition and EDSARP and of the opportunity to request a hearing on the alleged violations and the proposed penalties and corrective actions.
6. As required by TEX. GOV'T CODE ANN. §§ 2001.051(1) and 2001.052; TEX. WATER CODE ANN. § 7.058; 1 TEX. ADMIN. CODE § 155.27; and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondents were notified of the hearing on the alleged violations and the proposed penalties and corrective actions.
7. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.
8. Based on the Findings of Fact and Conclusions of Law:
 - (a) Rosedale violated 30 TAC § 334.47(a)(2) by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and
 - (c) Rosedale violated 30 TAC § 334.7(d)(3) by failing to provide an amended UST registration to the Commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition.
9. In determining the amount of an administrative penalty, TEX. WATER CODE ANN. § 7.053 requires the Commission to consider several factors including:

- Its impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
10. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
 11. Based on consideration of the above Findings of Fact, the factors set out in TEX. WATER CODE ANN. § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for each of the alleged violations and a total administrative penalty of \$3,675 is justified and should be assessed against Rosedale.
 12. Based on the above Findings of Fact, Rosedale should be required to take the corrective action that the Executive Director recommends.
 13. Based on the above Findings of Fact, no sanctions should be imposed against Goodyear.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. 4200 Rosedale LLC is assessed an administrative penalty in the amount of \$3,675 for violations of 30 TAC §§334.7(d)(3) and 334.47(a)(2). The payment of this administrative penalty and 4200 Rosedale LLC's compliance with all the terms and conditions set forth in this Order will completely resolve the matters set forth by this Order.

The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. All checks submitted to pay the penalty assessed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: 4200 Rosedale LLC; Docket No. 2007-1259-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Within 30 days after the effective date of this Order, 4200 Rosedale LLC shall permanently remove the UST system from service, in accordance with 30 TAC § 334.55.
3. Within 30 days after the effective date of this Order, 4200 Rosedale LLC shall submit an amended registration to indicate the current ownership and operational status of the UST system, in accordance with 30 TAC § 334.7, to:

Registration and Reporting Section
Permitting & Remediation Support Division, MC 138
Texas Commission on Environmental Quality
P.O. Box 13087
Austin TX 78711-3087

4. Within 45 days after the effective date of this Order, 4200 Rosedale LLC shall submit written certifications as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2 and 3. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for

obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be sent to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

with a copy to:

Frank Bureson, Waste Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, TX 76710-7826

5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (OAG) for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
6. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
7. The effective date of this Order is the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.
8. As required by TEX. WATER CODE ANN. § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondents.

9. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Chairman
For the Commission